

**DW 05-179
DW 04-048**

**PENNICHUCK WATER WORKS, INC., PENNICHUCK EAST UTILITY, INC., AND
PITTSFIELD AQUEDUCT COMPANY, INC.**

Petition for Waiver of Puc 610.01(e)(15)

**Order Approving Intervention, Denying Motion to Consolidate and
Approving the Waiver Request on a Temporary Basis**

ORDER NO. 24,596

March 3, 2006

I. PROCEDURAL HISTORY AND BACKGROUND

On November 10, 2005, Pennichuck Water Works, Inc. (PWW), Pennichuck East Utilities, Inc. (PEU), and Pittsfield Aqueduct Company, Inc. (PAC), (together, Pennichuck Utilities) filed a request for a waiver of Puc 610.01(e)(15) of the Uniform System of Accounts for Water Utilities, which requires utilities to specify the functional operation of its assets down to the level of certain subaccounts. In support of the request, the Pennichuck Utilities state that, from 1850 through 1987, it maintained plant accounting records in hard copy, without subaccount designations. Furthermore, in 1987, the Pennichuck Utilities began keeping records through commercial software that does not accommodate the level of subaccounts contemplated in Puc 610.01 (e)(15). The Pennichuck Utilities discovered this deficiency in the context of a recent rate case. In January 2005, the Pennichuck Utilities began using software that can account for additional subaccounts, however, they argue the task of introducing the additional subaccounts to specify the functional operation of the 8,296 assets would be extremely burdensome. The Pennichuck Utilities' state their general ledger software also does not accommodate the additional subaccounts. Lastly, the Pennichuck Utilities aver that absence of the subaccount designations has not adversely effected the Pennichuck Utilities' ability to

provide records to satisfy the underlying purposes of the Chart of Accounts. The Pennichuck Utilities anticipate evaluating new software for 2006 and will assess whether software exists that can accommodate the additional subaccounts. Until then, the Pennichuck Utilities seek waiver of Puc 610.01(e)(15).

On December 7, 2005, the City of Nashua (Nashua) filed a Petition to Intervene and Motion to Consolidate. Nashua requested that the Commission grant Nashua's petition to intervene, consolidate consideration of the waiver request with DW 04-408, deny Pennichuck Utilities' request for a waiver, and order PWW to produce the functional breakdown of its utility plant in accordance with Puc 610.01e)(15). Nashua argued that the Pennichuck Utilities have not demonstrated grounds for the waiver, namely that compliance would be onerous and that, in fact, PWW has repeatedly provided breakdown by subaccounts when it served its interest to do so. Nashua avers that the waiver would undermine the Commission's ability to review depreciation and that PWW's request is a direct result of discovery in DW 04-048 and thus PWW should seek relief in DW 04-048 for a waiver from any sanctions the Commission might impose due to PWW's failure to provide the required information to Nashua. Lastly, Nashua argues it is disadvantaged by PWW submitting a request for a waiver in a completely separate proceeding.

On December 14, 2005, the Commission issued a secretarial letter to parties in DW 04-048 and DW 05-179 stating it had "determined that the orderly and efficient conduct of DW 04-048 will be promoted by considering the waiver request as it applies to PWW in DW 04-048, and it will defer consideration of the Motion to Consolidate and hold in abeyance the waiver request as it applies to PEU and PAC." The Commission stated it would "receive comments, from any party, including the City of Nashua and PWW, on the waiver request as it applies to PWW up until the close of business December 23, 2005. The Commission seeks in such

comments further development of the issue of whether further subdivision of plant accounts is critical to valuation.”

On December 16, 2005, the Pennichuck Utilities filed an objection to Nashua’s petition. The Pennichuck Utilities requested that the Commission deny Nashua’s motion to consolidate, deny its request for production of the additional subaccount information, and grant the Pennichuck Utilities’s request for a waiver. The Pennichuck Utilities disputed factual allegations made in Nashua’s petition and objected to the Motion to Consolidate. The Pennichuck Utilities argue that, while Nashua claims that the absence of the additional subaccounts undermines the Commission’s ability to review the depreciation, useful life, and other aspects of the companies in determining whether rates are just and reasonable, during the past 15 years, the Pennichuck Utilities have filed more than a half dozen rate cases before the Commission and their records have been audited in detail without the subaccounting issue being raised. As for Nashua’s statement that the Pennichuck Utilities can produce a functional breakdown when it is in their benefit to do so is incorrect, the Pennichuck Utilities argue that the F-8 filings simply reflect a general estimation of the aggregate asset value for each individual utility by the five functional categories and are not a summation of individual asset account information that is separately maintained. Furthermore, the Pennichuck Utilities averred that consolidation is inappropriate since adding the waiver issue to DW 04-048 would delay resolution of that docket and would create unnecessary expense. Lastly, the Pennichuck Utilities contended that if Nashua needed the additional subaccount information for valuation purposes, it should have filed a motion to compel.

On December 20, 2005, Staff forwarded comments from Ms. Claire McHugh, Intervenor in Docket No. DW 04-048. Ms. McHugh’s comments were critical of the

Pennichuck Utilities' motives for requesting a waiver and urged the Commission to deny the Pennichuck Utilities' waiver request.

On December 20, 2005, the Town of Merrimack (Merrimack) filed a Limited Objection to the City of Nashua's Petition to Intervene and Motion to Consolidate. Merrimack urged the Commission to deny Nashua's motion to consolidate. Merrimack averred that consolidating the waiver issue with DW 04-048 would unduly complicate an already complicated docket and that the waiver issue was essentially irrelevant to the underlying petition in DW 04-048 for valuation pursuant to RSA 38:9. Merrimack observed that the Pennichuck Utilities' technical noncompliance with the Uniform System of Accounts does not appear to have posed an administrative or adjudicatory problem in the past. Lastly, Merrimack stated that the real issue is that it may be more work for Nashua's experts to undertake certain aspects of a valuation and that Nashua has not alleged that it is impossible to do so or that it causes undue inconvenience. Merrimack expressed its concern that consolidating the waiver issue would increase the time and expense of DW 04-048.

On December 22, 2005, Staff filed an objection to Nashua's motion to consolidate and comments relative to whether the information sought to be waived is critical to the valuation issue presently before the Commission in DW 04-048. Staff requested that the Commission grant Nashua's motion to intervene, deny Nashua's motion to consolidate, and defer ruling on whether all Class A water utilities must create functional operation subaccounts until a complete investigation can be undertaken. Staff also stated that it believed Nashua had the information it needed to create functional operation subaccounts. Staff based its belief on the fact that PWW had represented to Staff that the functional operation subaccounts could be created by reviewing PWW's main pipe inventory listing and plant records. Staff confirmed that PWW produced

these records to Nashua. Staff averred that reviewing the subaccount issue in one docket, rather than in the context of DW 04-048, would promote a more uniform resolution of the necessity of the functional operations subaccounts especially since the issue affected eight other water utilities regulated by the Commission. Lastly, Staff offered no opinion as to whether the functional operations subaccount information was critical to the issue of valuation in DW 04-048.

II. COMMISSION ANALYSIS

This matter commenced as a request by the Pennichuck Utilities for a waiver of the Commission's rules. Nashua then sought intervention and requested consolidated consideration of the waiver request with DW 04-408, denial of Pennichuck Utilities' request for a waiver, and an order that PWW produce the functional breakdown of its utility plant in accordance with Puc 610.01(e)(15). The issues are discussed in turn.

Pursuant to RSA 541-A:32, the Commission may grant a petition for intervention when the petitioner states facts demonstrating that the petitioner's rights, duties, privileges, immunities or other substantial interests may be affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law. The Commission must also determine that the interests of justice and the orderly and prompt conduct of the proceedings would not be impaired by allowing the intervention. Nashua has stated that during the course of discovery in DW 04-048 it requested that PWW provide specific subaccount designations which would show the functional operation of PWW's assets. This is the very level of subaccounting detail that PWW asks the Commission to waive. We find that Nashua has satisfied that it has a substantial interest in PWW's waiver request and thus a substantial interest in the outcome of Docket No. DW 05-179. We further believe that Nashua's intervention will promote the interest of justice

and will not impair the orderly and prompt conduct of this proceeding. Accordingly, we will grant Nashua's request to intervene.

We next address Nashua's consolidation request. Previously, we determined that the orderly and efficient conduct of DW 04-048 would be promoted by considering the waiver request as it applies to PWW in DW 04-048. We deferred consideration of the Motion to Consolidate as it applied to PEU and PAC. Consolidation to a common record would be appropriate when similar relief is sought and such consolidation would promote the orderly and efficient conduct of the proceeding. DW 04-048 concerns Nashua's request for valuation of PWW's assets. Assets of PEU and PAC, petitioners in the instant docket, were initially included in Nashua's valuation petition, but were removed from consideration by Order No. 24,425 (January 21, 2005). The Town of Merrimack, Staff, and the Pennichuck Utilities all averred that consolidation would unduly complicate DW 04-048. Having reviewed the petitions, motions, and objections, we do not find that the orderly and efficient conduct of either proceeding would benefit from consolidating PEU and PAC's waiver request with DW 04-048. Accordingly, we deny Nashua's request to consolidate as it pertains to PEU and PAC.

We next address the request for a waiver of Puc 610.01(e)(15). We may grant a waiver upon a finding that the waiver serves the public interest and that the waiver does not disrupt the orderly proceeding of the Commission. A petitioner must establish that compliance with the rule would be onerous given the circumstances of the petitioner and the purpose of the rule is satisfied by alternate means.

On this point, the Pennichuck Utilities argue: 1) that their current commercial software does not allow the use of additional decimal points; and 2) that although the Pennichuck Utilities began using software in January 2006 that can account for additional

subaccounts, the task of adding the additional subaccounts to specify the functional operation of the 8,296 assets would be extremely burdensome. The Pennichuck Utilities further argue that the absence of the subaccount designation has had no adverse effect on past rate cases and on the Pennichuck Utilities' ability to provide records to comply with the underlying purposes of the Chart of Accounts. The Pennichuck Utilities anticipate evaluating new software in the future that can accommodate the additional subaccounts, however, until then, the Pennichuck Utilities seek a waiver of Puc 610.01(e)(15).

By the Commission's December 14, 2005 letter to the parties, comments were sought on the issue of whether the absence of the subaccount designations adversely affected the ability of parties to value PWW's assets. Staff stated in its objection that it attempted to resolve this discovery issue with PWW and Nashua and confirmed that Nashua had received PWW's main pipe inventory listing and plant records from which it could derive the subaccount designations itself. The Town of Merrimack noted in its objection that Nashua had not alleged that it is impossible to create the subaccounts or that the inconvenience was undue. Having reviewed the pleadings, we conclude that the absence of the subaccount designations does not adversely affect valuation efforts in DW 04-048 and does not appear to adversely affect the Commission's ability to adequately review books and records of regulated water utilities. Accordingly, we find the requested waivers for PWW, PEU and PAC serve the public good and will not disrupt the orderly proceedings of the Commission.

We will grant the Pennichuck Utilities' request to waive Puc 610.01(e)(15) of the Uniform System of Accounts for Water Utilities pending further investigation. We will deny Nashua's request that PWW be ordered to produce the subaccount information. In light of this

finding, we will commence a separate investigation of whether Class A and Class B water utilities ought to be required to maintain subaccount designations.

Based upon the foregoing, it is hereby

ORDERED, that the City of Nashua's Petition to Intervene in DW 05-179 is granted; and it is

FURTHER ORDERED, that the City of Nashua's Motion to Consolidate as it applies to Pennichuck East Utilities, Inc. and Pittsfield Aqueduct Company, Inc. is denied; and it is

FURTHER ORDERED, that Pennichuck Water Works, Inc., Pennichuck East Utilities, Inc., and Pittsfield Aqueduct Company, Inc.'s request for a waiver of Puc 610.01(e)(15) of the Uniform System of Accounts for Water Utilities in Dockets DW 04-048 and DW 05-179, respectively, is granted; and it is

FURTHER ORDERED, that the City of Nashua's request that the Commission order Pennichuck Water Works, Inc. to produce the functional breakdown of its utility plant in accordance with Puc 610.01e)(15) is denied.

By order of the Public Utilities Commission of New Hampshire this third day of March, 2006.

Thomas B. Getz
Chairman

Graham J. Morrison
Commissioner

Clifton C. Below
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary